

# Town of Frederick Board of Trustees



Eric Doering, Mayor

Sue Wedel, Mayor Pro Tem  
Liberta Hattel, Trustee  
Amy Schiers, Trustee

Tony Carey, Trustee  
Gerry Pfirsch, Trustee  
Jim Wollack, Trustee

---

AM 2009-090

---

## REQUEST TO WAIVE SECTION 4.11.2.A (4) OF THE LAND USE CODE FOR THE SHREK SUBDIVISION AMENDMENT (TOPS BUSINESS PARK)

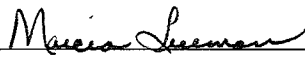
---

**Agenda Date:** September 22, 2009

**Attachments:**

- a. Letter from the applicant / criteria response
- b. Resolution
- c. Vicinity map
- d. Tops Business Park
- e. Shrek Subdivision Amendment

**Fiscal Note:** None noted.

  
\_\_\_\_\_  
Marcia Lierman, Finance Director

**Submitted by:**

  
\_\_\_\_\_  
Todd Tucker, Staff Planner

**Approved for Presentation:**

  
\_\_\_\_\_  
Derek Todd, Town Administrator

**AV Use Anticipated** Projector   X   Laptop       

---

**Certification of Board Approval:**

\_\_\_\_\_  
Town Clerk

\_\_\_\_\_  
Date

**Summary Statement:**

On December 30, 2008, the Shrek Subdivision Amendment was approved, creating two parcels of land within the Shrek Annexation. The applicant desires to reconfigure lot lines between the Shrek Subdivision Amendment and the Tops Business Park Subdivision. However, Section 4.10.2.a (4) of the Land Use Code requires one year between approvals of a Subdivision Amendment. Consequently, the applicant has requested a waiver from this provision of the Land Use Code to facilitate parcel reconfiguration and possible development prior to the timing requirement.

*While no referral indicated a conflict with the request, Staff cannot support a deviation from the provisions of the Land Use Code, unless otherwise approved by the Board of Trustees. Therefore, staff seeks direction from the Board regarding the request.*

**Detail of Issue/Request:**

***Applicant / Owner:*** Jason Hepp Blackfox Real Estate Group, LLC.

***Surrounding Zoning / Land Uses:*** The Shrek Subdivision Amendment encompasses a 2.29 acre portion of the southeast quarter of Section 25, T1N, R68W and is bounded by Colorado Boulevard to the east, Tipple Parkway to the south, the Halleck Subdivision and Tops Business park to the west and Keyes Street in the Tops Business Park to the north.

North	C-N Neighborhood Commercial
South	R-1 Residential
East	Weld County Agricultural
West	C-N Neighborhood Commercial

***Referral:*** The application was referred per the provisions of the Land Use Code to the applicable referral agencies, departments, and interests.

***Public Notice:*** The public meeting was noticed in accordance with the provision of the Land Use Code.

***Review Criteria:*** Section 4.7.8 of the Land Use Code establishes the criteria for a waiver request as follows:

**(1) The waiver, if granted, will not alter the essential character of the neighborhood or district in which the property is located, nor diminish the value, use or enjoyment of adjacent property.**

***Section 4.11.2.a (4) of the Code states*** “The property for which the Amendment is requested was not the subject of a minor Amendment or subdivision amendment approval during the prior one (1) year.”

***Subsections 4.11.2.b and c. state:***

b. Minor subdivision purpose. The purpose of a subdivision amendment is to complete the subdivision of land consistent with the Town’s technical standards.

c. Minor subdivision review criteria. All minor subdivision plats except Boundary/Lot Line Adjustments shall comply with the following criteria to evaluate the Applicant’s request:

(1) A minor subdivision shall meet the review criteria applicable to preliminary plat stated in Section 4.7.4.

*The purpose of this provision of the Land Use Code is to prevent development from circumventing the Subdivision provisions of the Land Use Code. In this instance, the Shrek Subdivision Amendment was approved in December of 2008 and Tops Business Park Subdivision was approved in 1985 with a Replat to Lot 4 approved in 2003.*

*The applicant suggests that “This waiver will help the property become a place for the Town’s*

*residents to enjoy another great dining opportunity and is consistent with the comprehensive plan and the highest and best use for the property."*

*Staff finds that the current configuration of the Shrek Subdivision Amendment parcels is awkward, conflicts with several Community Design Principles described in Article 2 of the Land Use Code, and may limit development opportunities within the Tops Business Park. Reconfiguring the lots between the two developments is likely to promote a cohesive development pattern, equitable storefront visibility, and would maintain consistency with the character of the neighborhood, streetscape, and various design elements of the Land Use Code (see section 2.3 of the Land Use Code).*

*No referral indicated any conflicts with this criterion. Furthermore, due to the unique configuration of the lots (see vicinity map attached) re-configuration of the lot lines may enhance the character of the neighborhood by promoting an equitable development pattern, streetscape, and lots and blocks laid out in conformance with the Design Elements noted in Article 2 of the Land Use Code. In addition, there is no evidence to suggest that approval of the request would adversely affect the essential character of the neighborhood in which the property is located, or diminish the value, use or enjoyment of adjacent property.*

**(2) The waiver, if granted, is the minimum variance that will afford relief and is the least modification possible of the subdivision ordinance provisions which are in question.**

*The applicant suggests that "Yes I believe it is. Although we are nearing end of the one year requirement, I feel that time is of the essence to secure this opportunity. This very lot would get created with the Re-plat of Tops Business Park anyway."*

*Staff finds that no referral indicated a conflict with this criterion. Since there are no applicable code amendment anticipated and the proposed request would not adversely affect the character of the neighborhood; granting the waiver request would be the minimum variance that will afford relief and is the least modification possible of section 4.11.2.a (4) of the Land Use Code.*

**(3) Such practical difficulties or unnecessary hardship has not been created by the applicant.**

*The applicant suggests that "The re-plat of the property will incorporate the lot that this waiver will help us to create initially. This will help secure our opportunity to produce a long-term home for this business. Blackfox Real Estate Group, LLC has not created hardship; however today's (economic) environment has made even the simplest real estate transactions a challenge."*

*Staff finds that the two subdivisions were annexed and approved at different times and held under separate ownerships. The applicant contemplated the proposed parcel reconfigurations at the time of approval for the Shrek Subdivision Amendment, and would likely have been approved by staff through the Subdivision Amendment Process, provided applicable standards were met. However, the contracting party wasn't prepared to proceed at the time. Therefore, the practical difficulties were not created by the applicant.*

**Summary:** *The applicant could have proceeded with the proposed parcel reconfiguration prior to approval of the Shrek Subdivision Amendment and could either wait until the timing*

*requirements are met or apply for approval under a different subdivision process per the provision of the Land Use Code. In any case, the applicant will be required to comply with the applicable provisions of the Land Use Code.*

*Please note that, due to the unique circumstances of the site, as noted above, the waiver request is related to a matter that would likely have been approved as part of the Shrek Subdivision Amendment, and is also likely to be approved as part of a separate process whether it proceeds now or in four months (provided the applicable provisions of the Code are met). In addition, there is no evidence to suggest that granting the waiver would result in harm to the neighborhood and the practical difficulties were not created by the applicant. Furthermore, granting the waiver is not a guarantee that the anticipated Subdivision Amendment will be approved, as it must be considered in accordance with the provisions of the Land Use Code. Lastly, staff cannot support a deviation from the provisions of the Land Use Code, unless the waiver request is approved by the Board of Trustees.*

**Legal/Political Considerations:**

*None noted.*

**Alternatives/Options:**

***ACTIONS:*** *The Board of Trustees may consider the following options regarding the application:*

- ☐ *Approval of the request finding it is substantially in conformance with the provisions of the Land Use Code and Comprehensive Plan;*
- ☐ *Denial of the request with a finding that it does not substantially achieve conformance with the provisions of the Land Use Code and Comprehensive Plan;*
- ☐ *Approval of the request finding that it would be substantially in conformance with the provisions of the Land Use Code and Comprehensive Plan if certain conditions are met;*

**Financial Considerations:**

*Not Applicable.*

**Staff Recommendation:**

*Staff seeks direction from the Board of Trustees regarding the request to waive Section 4.11.2.a.(4) of the Land Use Code.*